

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-343-C - ORDER NO. 1999-852  
DECEMBER 6, 1999

IN RE: Application of Rhythms Links, Inc. for a	) ORDER GRANTING ✓
Certificate of Public Convenience and	) APPLICATION
Necessity to Provide Local Exchange,	) TO PROVIDE LOCAL
Exchange Access, and Interexchange	) EXCHANGE SERVICES,
Intrastate Telecommunications Services	) EXCHANGE ACCESS
within the State of South Carolina and for	) SERVICES AND
Flexible Regulation of its Local Exchange	) INTEREXCHANGE
Services and Alternative Regulation of its	) SERVICES AND FOR
Long Distance Business Services Offerings.	) FLEXIBLE AND
	) ALTERNATIVE
	) REGULATORY
	) TREATMENT OF
	) SERVICES

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the Application of Rhythms Links, Inc. ("Rhythms" or "the Company") for authority to operate as a provider of local exchange, exchange access, and intrastate interexchange telecommunications services within the State of South Carolina. Rhythms also requests that its local exchange and exchange access telecommunications services be regulated in accordance with the principles and procedures adopted for flexible regulation by Order No. 98-165 in Docket No. 97-467-C<sup>1</sup> and that its long

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<sup>1</sup> "Flexible regulation" of local exchange services was initially approved by the Commission for NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Subsequently, the Commission has approved flexible regulation for other companies providing local exchange services. The Commission will consider Rhythms request for "flexible regulation" as being a request for regulatory treatment identical to the "flexible regulation" approved for NewSouth Communications in Docket No. 97-467-C.

distance business service offerings be regulated in accordance with the principles and procedures established for alternative regulation set forth in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. § 58-9-280 and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed Rhythms to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Rhythms complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Association ("SCTA"). Prior to the hearing, counsel for SCTC filed with the Commission a Stipulation in which Rhythms stipulated that it would only seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer in a rural incumbent's service area, unless and until Rhythms provided written notice of its intent prior to the date of the intended service. Rhythms also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Rhythms agreed to abide by all State and Federal laws and to participate to the extent it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Rhythms provided the conditions

contained in the Stipulation are met. The Stipulation is approved, incorporated as a part of this Order, and attached hereto as Order Exhibit 1.

A hearing was commenced on November 18, 1999, at 11:30 a.m., in the Commission's Hearing Room. The Honorable William Saunders, Vice Chairman, presided. Rhythms was represented by B. Craig Collins, Esquire, and Colin Alberts, Esquire. Mr. Alberts is a member in good standing of the bars of New York and Washington, D.C. and was admitted pro hoc vice for the purposes of the instant hearing. F. David Butler, General Counsel, represented the Commission Staff.

Robert L. Rowe, Senior Manager of Rhythms, appeared and offered testimony in support of Rhythms' application. The record reveals that Rhythms is a Delaware corporation which is registered to conduct business in South Carolina as a foreign corporation with the South Carolina Secretary of State. According to Mr. Rowe, Rhythms seeks certification to provide local exchange, exchange access, and intrastate interexchange telecommunications services in South Carolina. Specifically, Mr. Rowe stated that Rhythms will offer facilities-based and resold high-speed data service and voice services to its customers. These services will be provided on a full-time basis, twenty-four hours per day, seven days per week. According to Mr. Rowe, Rhythms intends to provide its high-speed data services through the deployment of digital subscriber lines ("DSL") and intends to provide local exchange service and exchange access service through the purchase of unbundled network elements, lease arrangements, and the use of its own facilities. With regard to interexchange services, Mr. Rowe stated that Rhythms intends to use its own facilities-based capabilities as well as the

transmission networks of other certified carriers, including AT&T, MCI WorldCom, and Sprint.

Mr. Rowe explained that Rhythms possesses the technical, financial, and managerial resources and abilities to provide interexchange and local exchange telecommunications services. Mr. Rowe stated that Rhythms has received certification to provide local exchange and interexchange services in several states. Mr. Rowe offered that Rhythms has an experienced and highly able management team that includes individuals of considerable experience in business, technical, operational, and regulatory telecommunications experience. Mr. Rowe testified that Rhythms has the financial ability to provide the services for which it seeks authority and offered that Rhythms' financial resources and capital are sufficient to allow Rhythms to succeed in a rapidly changing telecommunications market.

Mr. Rowe offered that Rhythms' entry into the telecommunications industry in South Carolina will be beneficial to the public by providing additional customer choice, promoting competition, and stimulating the development of additional telecommunications services. In addition, Mr. Rowe offered that Rhythms expects to invest significantly in the development of a South Carolina infrastructure and provide employment opportunities for South Carolina residents.

Mr. Rowe testified that Rhythms would operate in accordance with the Commission rules, regulations, guidelines and Commission Orders. Mr. Rowe also stated that Rhythms would support universally available telephone service at affordable rates and stated that the provision of local service by Rhythms would neither adversely impact

affordable local service nor adversely affect local rates. Mr. Rowe specifically stated that the services Rhythms will provide will meet the service standards of the Commission

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Rhythms is organized as a corporation under the laws of the State of Delaware and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. Rhythms wishes to provide local exchange services, exchange access services, and interexchange services within the State of South Carolina.
3. The Commission finds that Rhythms possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. § 58-9-280(B)(1) (Supp. 1998).
4. The Commission finds that Rhythms' "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. § 58-9-280(B)(3) (Supp. 1998).
5. The Commission finds that Rhythms will support universally available telephone service at affordable rates. S.C. Code Ann. § 58-9-280(B)(4) (Supp. 1998).
6. The Commission finds that Rhythms will provide services which will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280(B)(2) (Supp. 1998).

7. The Commission finds that the provision of local exchange service by Rhythms “does not otherwise adversely impact the public interest.” S.C. Code Ann. §58-9-280(B)(5) (Supp. 1998).

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Rhythms to provide competitive intrastate local exchange and exchange access services within the non-rural local exchange service areas of South Carolina. The terms of the Stipulation between Rhythms and SCTC are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation.

Further, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Rhythms to originate and terminate toll traffic within the same LATA and between LATAs, as set forth herein, through intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for or by tariffs of carriers approved by the Commission.

2. Rhythms shall file, prior to offering local exchange and exchange access services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Rhythms’ local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the

Commission adopts for Rhythms' competitive intrastate local exchange and exchange access services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Rhythms' local exchange service and exchange access service tariff filings will be presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of Rhythms which are consistent with the principles and procedures established for alternative regulation of business services offering set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Rhythms, including credit card services, operator services, and customer network offerings, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended

until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Rhythms also.

With regard to the residential long distance service offerings of Rhythms, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

Rhythms shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. Rhythms shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1998).

4. If it has not already done so by the date of issuance of this Order, Rhythms shall file its revised maximum long distance tariff and an accompanying price list within

thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Rhythms is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to the Company's interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Rhythms shall resell the services of only those interexchange carriers or LECs authorized by this Commission to do business in South Carolina. If Rhythms changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll calls within the same LATA, Rhythms shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993). However, Rhythms shall not be required to comply with the 10-XXX intraLATA dialing requirement contained in the Commission's Orders cited above as the Commission's requirement regarding 10-XXX intraLATA dialing has been preempted by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996. (See, 47 C.F.R. § 51.209.)

9. Rhythms shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The

proper form for these reports is indicated on Attachment A. Additionally, Rhythms shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Rhythms shall keep financial records on an intrastate basis to comply with the annual report and gross receipt filings.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Rhythms shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

11. Rhythms shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.


13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Rhythms to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Rhythms shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

DOCKET NO. 1999-343-C - ORDER NO. 1999-852  
DECEMBER 6, 1999  
ATTACHMENT A

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S**

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR  
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- \* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN  
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF  
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR ENDING  
\_\_\_\_\_.
- \* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION  
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT  
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS  
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3  
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

## AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION  
103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

\_\_\_\_\_  
Company Name ( Including dba Name(s) or Acronyms used or to be used in South Carolina)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City, State, Zip Code

A.

\_\_\_\_\_  
General Manager Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

B.

\_\_\_\_\_  
Customer Relations (Complaints) Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

C.

\_\_\_\_\_  
Engineering Operations Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

D.

\_\_\_\_\_  
Test and Repair Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

E.

\_\_\_\_\_  
Contact for Emergencies During Non-Office Hours (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

F.

\_\_\_\_\_  
Financial Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

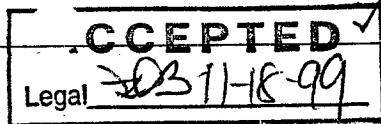
G.

\_\_\_\_\_  
Customer Contact Telephone Number for Company (Toll Free)

\_\_\_\_\_  
This form was completed by

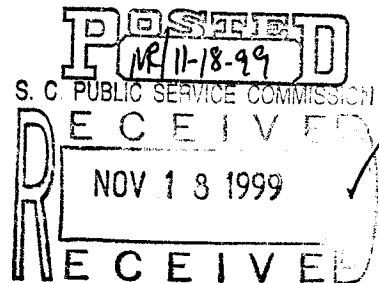
\_\_\_\_\_  
Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)  
or Utilities Department at (803-896-5105).**



BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA

Docket No. 1999-343-C



Re: Application of Rhythms Links, Inc. for a )  
Certificate of Public Convenience and )  
Necessity to Provide Local Exchange, )  
Interexchange, and Exchange Access )  
Telecommunications Services in the State )  
of South Carolina )

**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Rhythms Links, Inc. ("Rhythms Links") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, the necessity for SCTC's intervention in this matter is avoided and SCTC withdraws its opposition to Rhythms Links's Application. SCTC and Rhythms Links stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Rhythms Links, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Rhythms Links stipulates and agrees that any Certificate which may be granted will authorize Rhythms Links to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Rhythms Links stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

RETURN DATE: \_\_\_\_\_  
SERVICE: OK MR

4. Rhythms Links stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Rhythms Links provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Rhythms Links acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Rhythms Links stipulates and agrees that if Rhythms Links gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Rhythms Links will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Rhythms Links acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects

such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Rhythms Links agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Rhythms Links hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

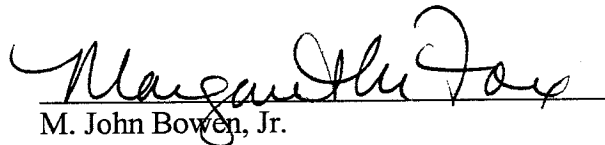
AGREED AND STIPULATED to this 16<sup>th</sup> day of November, 1999.

Rhythms Links, Inc.



Attorneys for Rhythms Links, Inc.

South Carolina Telephone Coalition:



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Post Office Box 11390  
(803) 799-9800

Attorneys for the South Carolina Telephone Coalition

## ATTACHMENT A

### South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.  
Bluffton Telephone Company, Inc.  
Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Hargray Telephone Company, Inc.  
Heath Springs Telephone Company Inc.  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company